# STATE OF MICHIGAN

# COURT OF APPEALS

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GEORGE PAPADELIS and MARY JO PAPADELIS,

Plaintiffs-Appellants,

v

DAVID DECKER, PERILYN DECKER, FREDERICK KIRKPATRICK, GAYLE KIRKPATRICK, LAWRENCE MOCERI, PAULA MOCERI, FARID NASSAR, MICHELLE NASSAR, CHARLES SOUTHWORTH, ROBERTA SOUTHWORTH, GARY COCKMAN and THERESA COCKMAN,

Defendants-Appellees.

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UNPUBLISHED
June 1, 1999

No. 206022
Lapeer Circuit Court
LC No. 95-021822 CH

Before: Holbrook, Jr., P.J., and O'Connell and Whitbeck, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition to defendants under MCR 2.116(C)(10). We affirm.

I

At the heart of this dispute is a private road known as Waterland Drive. Waterland Drive was expressly created by reciprocal easements on property parceled for sale by the White Sand Development Company in 1971. Waterland Drive was created to provide the future property owners of the White Sand lots a means of access to their land. Access for purposes incidental to living on those lots was also envisioned by the developers who specifically mentioned, for example, that the easement was to be used to bring public utilities into the area. However, nothing in the White Sand declaration of restrictions, covenants and easements indicates that other properties were to be benefited from or have access to the easement. Plaintiffs' property, which is located directly to the south of Waterland Drive, was not a part of the White Sand property.

On appeal, a trial court's decision to grant a summary disposition motion is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

> A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

II

Plaintiffs first argue that they are entitled to use Waterland Drive for ingress and egress because it abuts one side of their property and there is no other means of access to the land. While they acknowledge that Waterland Drive is a private road, they assert that it has become a dedicated road path for use by the public in general. We disagree.

Plaintiffs' argument implies that Waterland Drive has become a public thoroughfare because of the nature of the use to which it has been put. However, case law clearly indicates that the transition from private to public road can only occur under certain specific circumstances. For example, in *Village of Bellaire* v *Pankop*, 37 Mich App 50; 194 NW2d 379 (1971), this Court held:

> For a road to become public there must be either a highway by user or a dedication by the landowner and an acceptance on behalf of the public. To constitute a highway by user there must be open and notorious use for ten years by the public generally such that its public use is exclusive and prohibits a use in a manner inconsistent with a highway. Mere use by the public, however, does not alter the character of a private road. That use must be so open and notorious that it puts the landowner on notice of the public's rights in the land. [*Id.* at 54-55 (citations omitted).]

It was further stated in *Maghielse v Crawford Co Road Comm*, 47 Mich App 96, 98; 209 NW2d 330 (1973), that "[p]ermissive use of a private road, by the general public, no matter how long continued, will not make it a public highway." The record clearly indicates that any use plaintiffs made of Waterland Drive after they sold their property to the north was entirely permissive. Accordingly, plaintiffs' argument that Waterland Drive is a public thoroughfare to which they have rights of use as abutting landowners is without merit.

Given that plaintiffs failed to establish that Waterland Drive has become a public roadway, we conclude that their reliance on *Goodfellow Tire Co v Comm'r of Parks & Boulevards of the City of Detroit*, 163 Mich 249; 128 NW 410 (1910), is misplaced. *Goodfellow* involved a question of access to a public road. *Id.* at 251. Consequently, the holding of that case is simply inapposite.

III

Plaintiffs next argue that they should be granted an easement by implication. Again, we disagree. Although easements are usually created by express grant or by reservation in a deed or mortgage, they may also arise by operation of law. In *Forge v Smith*, 458 Mich 198, 211, n 38; 580 NW2d 876 (1998), the Michigan Supreme Court observed that a "claim of implied easement arises where two or more tracts of property are created from a single tract, and the use of the servient estate for the benefit of the dominant estate is apparent, continuous, and necessary." Accord *Schmidt v Eger*, 94 Mich App 728, 731; 289 NW2d 851 (1980).

Plaintiffs assert that when their predecessor in title purchased their property, title was merged with the predecessor's other property, which was one of the original White Sand lots. We are unpersuaded. "[F]or an implied easement to exist, the adjoining lots must be owned as a unit, not under separate deeds treated as separate properties." 2 Am Jur 2d, Easements and Licenses, § 30, p 601. Even when viewed in a light most favorable to plaintiffs, we conclude that unity of title cannot be established under the circumstances of this case. Therefore, because plaintiffs cannot show that an easement was implied either from necessity or from an implied reservation, see *Schmidt, supra* at 732-734, the trial court was correct in determining that as a matter of law, plaintiffs have no claim of an easement or right of use in Waterland Drive.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O'Connell
/s/ William C. Whitbeck